IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8395 OF 2004

Shri Prakash Bulchand Nagrani,)
Age 35, Occupation business,)
residing at 202, Sai Kunj, Rattan)
Garden, Ulhasnagar - 421 003.)..Petitioner
(Org.Defendant)

Vs.

Shri Jaikishin P. Chawla,)
adult, occupation service/business,)
at Shop No.1, Sai Kuttir Apartment,)
Near Gujrati School,)
Ulhasnagar - 421 001)
Dist. Thane.).. Respondent
(Org.Plaintiff)

--

Shri V.N.Tayade for the petitioner.

Shri S.P.Kanuga with Mrs.Sapna N.Nath for the respondent.

--

CORAM : R.M.S.KHANDEPARKAR, J

DATED : 20th OCTOBER, 2004.

ORAL JUDGMENT:

1. Heard the learned advocates for the petitioner and the respondent. Perused the records. Rule. By consent, the rule is made returnable forthwith.

2. It is the case of the petitioner that even though the respondent has clearly admitted in his

pleadings before the trial Court that he has not paid any rent after December, 2001, the Courts below could not have granted injunctive relief against the petitioner without imposing condition regarding payment of rent since January, 2002, considering the provisions of law comprised under Order 39 Rules 1 and 2 of the Code of Civil Procedure, and in that regard, reliance is sought to be placed in the decision of the learned Single Judge of Rajasthan High Court in the matter of **Mohanlal Shah v. Pukhraj Choudhari,** reported in 1995 AIHC 2056. It was sought to be argued that a specific ground in that regard was raised even before the lower appellate Court under clause (M) of the Appeal Memo and yet even the lower appellate Court failed to consider the said point while dismissing the appeal filed against the order of the trial Court.

3. It cannot be disputed that the Courts are empowered to impose conditions while granting relief of temporary injunction. It is however entirely in the discretion of the Court and the opposite party cannot insist upon imposing of any such condition, nor mere absence of imposition of condition while granting temporary injunction will render the order to be illegal or bad in law. As regards the exercise of

discretion in that regard, unless it is disclosed to have been exercised arbitrarily, there could hardly be an occasion for interference in the order of grant of injunction merely because the conditions have not been imposed while granting injunctive relief.

4. The orders passed by the trial Court and the lower appellate Court disclose that the relief in the nature of the temporary injunction has been granted for the maintenance of status quo in relation to the possession of the premises during the pendency of the suit. The operative portion of the order of the trial Court reads that :-

> "The order dt.1.1.2002 on Exh.5 for maintaining status-quo is modified and the defendant is directed not to dispossess the plaintiff from the suit shop without due process of law."

The appeal against the said order has been dismissed. In other words, the order merely directs the petitioner not to dispossess the respondent from the suit shop without due process of law. While issuing the said direction, the trial Court has arrived at the finding that undisputedly the suit shop is in

possession of the respondent.

5. It is the case of the respondent that he is in possession of the suit shop as the lessee whereas it is the case of the petitioner that the respondent is the employee of the petitioner. Undisputedly, there is no material placed on record in support of the contention that the respondent is employee of the petitioner. On the other hand, the documentary evidence which includes the documents pertaining to the telephone connection to the suit shop as well as the L.I.C. policy of the respondent, disclosed the occupation of the suit shop by the respondent. In the circumstances, the materials on record prima facie disclosed that the respondent was in settled possession of the suit shop. Hence, the petitioner has been merely directed not to dispossess the respondent, without following due process of law. By no stretch of imagination, such an order can be said to be either perverse or arbitrary or in breach of procedure or in illegal exercise of jurisdiction. Once it is found that the premises in question are in occupation of the person who has approached the Court seeking relief of injunction against the opposite party, who is apparently shown as interested in trying to dispossess the former from the suit premises,

otherwise than in due process of law, the order directing the parties to maintain status quo is bound to follow, unless the defendant is able to make out a case to the contrary.

6. The issue as to the status of the respondent in the suit premises is yet to be gone into and there has been no finding arrived at by both the Courts below on that aspect, nor any relief has been granted on the basis of any such status of the respondent in relation to the suit premises. Being so, the question of directing the respondent to pay the rent does not arise at all. On the contrary, the very argument which is advanced on behalf of the petitioner that the respondent should be directed to pay rent, rather than disclosing any ground for interference in the impugned judgment, lends further support to the findings arrived at by the Courts below regarding possession of the respondent in respect of the suit premises and justifies the order passed by the Courts below. Needless to say that in case the person in occupation of the premises is the lessee of the defendant, then certainly his obligations under the Rent Act will neither be curtailed nor he can avail exemption therefrom on the strength of the order of injunction. Irrespective of such order, such a person will have to

comply with his obligations under the Rent Act and on failure thereof, the consequences stipulated under the Rent Act could follow.

7. The decision of the Rajasthan High Court in **Mohanlal Shah's case (supra)** has absolutely no relevancy to the case in hand. That was a case where the suit was filed for grant of prohibitory as well as the mandatory injunction on the allegation that the defendant therein had raised illegal construction in the property of the plaintiff, and that the same was being occupied by the defendant. In the circumstances, instead of grant of mandatory injunction, while directing the maintenance of status quo as the construction had already been completed, the Court directed to pay certain amounts towards the compensation per month to the plaintiff as, the area wherein the construction was raised prima facie appeared to belong to the plaintiff. However, before issuing such direction, the Court therein had arrived at prima facie finding about the illegal occupation of the area of the plaintiff by the defendant. That is not the case in the matter in hand. Being so, the decision of the Rajasthan High Court does not lend any support to the petitioner's contention, in the facts and circumstances of the case in hand.

8. As regards the contention that there has been no payment of rent from January, 2002, attention was drawn to paragraph (2) of the plaint. In the said paragraph, it has been stated by the respondent that "the plaintiff has taken the suit shop from the defendant on rent of Rs.3,000.00 per month in 1997. The plaintiff has been paying rent till December 2001 regularly every month and has paid rent till December 2001 but the defendant is not passing the rent receipts on the premises that there is no practice of passing rent receipts in Ulhasnagar." Undisputedly, the suit was filed on 5th February, 2002. Obviously, the plaintiff/respondent had no occasion to make any statement in relation to the payment of rent subsequent to the December 2001 in the plaint filed on 5th February, 2002. Apart from the ground (M) in the Memo of Appeal, there was no statement of fact made by the petitioner either before the trial Court or before the lower appellate Court regarding non payment of rent since January 2002, nor there was any specific plea raised even in the alternative before the trial Court or before the lower appellate Court that in case of grant of injunction, the same should be on condition that the respondent should pay rent since January, 2002. The ground which is taken to challenge

the order of the lower appellate court in the Memo of Appeal by itself cannot be construed as a statement of fact.

9. In order to justify a claim in a matter, the party seeking relief in that regard has to disclose the facts and based on such facts, if the same are established, he could succeed in obtaining relief from the Court. Merely because the party has raised the ground stating that the Courts below could not have granted injunction without imposing condition in respect of the payment of rent since January, 2002, that by itself cannot be construed to mean that in fact the respondent has not paid rent from January, 2002. Whether the respondent has paid the rent from January, 2002 or not is the question of fact and party seeking any relief in that regard has to lay factual foundation on that point. There being no such attempt made by the petitioner before the Courts below, merely because the Courts have not imposed the condition regarding payment of rent, that would not lead to a conclusion that the impugned order is bad in law.

10. Be it as it may, the direction to the petitioner not to disturb the possession of the respondent from the suit shop is not without any

condition as such. The direction is only to the extent that the possession should not be disturbed otherwise than in due course of law. It is well settled that once a person is found in the settled possession of the premises, even lawful owner cannot disturb his possession thereof, without following due process of law and being so, no fault can be found with the impugned order.

11. Infact, the present petition is nothing but an abuse of process of Court. Once the Court finds that the party is in the settled possession of the premises and opposite party tries to dispossess the former therefrom, the relief in the nature of direction not to dispossess from the settled possession of the premises has to follow as a matter of course. No party can be heard to say that he has a right to dispossess the person from the settled possession of the premises without following the due process of law. Any proceedings with such contention will have to be considered as an abuse of process of Court, more so, when such person intends to take law in his hand to dispossess the person in settled possession of the suit premises. The petitioner therefore was offered the option of withdrawal of the petition. However, the petitioner insisted for arguing the petition for

an appropriate order in the matter. In the facts and circumstances of the case, therefore, the petition not only deserves to be dismissed but needs to be dismissed with exemplary costs.

12. In the result, the petition is dismissed and the rule is discharged with exemplary costs of Rs.5,000/-. The costs shall be paid in the Registry of this Court within a period of two weeks, and on payment thereof, the Registry shall credit the same in the account of Maharashtra State Legal Services Authority.